

Remarks

This amendment responds to the official action of November 9, 2009 and is accompanied by a petition for extension of time and a request for continued examination.

Claim 14 was rejected as indefinite under 35 U.S.C. §112, second paragraph, due to the term "disk-shaped." According to the official action, it is unclear what the term includes or excludes. Reconsideration is requested. The term "disk" or "disc" is a conventional term in the English language and is used in its conventional sense in the description and claims. Both terms "disk" and "shaped" are well understood. A disk (or disc) is a thin circular object. See *Merriam Webster's Collegiate Dictionary*, 11th Ed., p. 360. "Disk-shaped" refers to the characteristic of having a thin circular shape.

There is no basis to object to a standard English term on the ground that in some scenario there might be an issue presented as whether or not some item meets the definition of the term in the claim. That is simply a matter of claim construction. A claim is not indefinite unless it contains a term that lacks a definition. That is not the case here. "Disk-shaped" means having a thin circular shape. If an item has a thin circular shape, it is disk shaped.

This is not a situation wherein there are alternative dictionary definitions for "disk." This is not a situation presenting a claimed term that is inherently vague. Compare, for example, *Ex parte Oetiker*, 23 USPQ2d 1641 (BPAI 1990). In *Oetiker*, a claim was considered indefinite for reciting "generally pan-shaped" and "relatively flat." However, the issue was not that "pan-shaped" or "flat" are indefinite terms. The indefiniteness was in the "generally" and "relatively" modifiers. In the present case, "disk-shaped" has a definite definition, namely a thin circular shape. The claim is definite.

Applicant requests that the Examiner reconsider and retract the rejection for indefiniteness under 35 U.S.C. §112, second paragraph, or else cite case law in support of the proposition that a shape found to be defined in the dictionary, that has been used consistently with that definition in the disclosure and claim, is indefinite due to the

potential for a claim construction issue to arise as to whether or not some conceivable item of arbitrary shape does or does not meet the defined shape.

Claims 1, 7-9, 11 and 13-14 were rejected as anticipated under 35 U.S.C. §§102(b) by US 1,078,283 – Hilfiker or US 4,091,998 – Peterson. Claim 13 is canceled. Reconsideration is requested for claims 1, 7-9, 11 and 14.

Regarding US 1,078,283 – Hilfiker, the cited reference discloses a manual grip structure for a hand held showerhead. Hilfiker fails to teach or suggest a wall mounting in which a hand-shower head can be held (thereby causing the spray to be oriented according to the wall mounting), or removed from the wall mounting and directed by the user while manually holding the grip.

In the official action, the Examiner asserts that arguments to that effect are not commensurate with the scope of the claims. Claim 1 as now amended recites that the shower head has a housing and a grip. The housing is engaged in the holder for spraying from the wall-mounted holder. The shower head is removable from the holder and remains operational for the user to direct the spray manually while holding the shower head by the grip.

Applicant's claim 1 concerns a shower head that has both a housing and a grip, and also is attachable and detachable from the holder that is wall mounted. Hilfiker does not disclose a wall mounting for a showerhead as defined in amended claim 1 and it is not possible to find in Hilfiker all the aspects defined in claim 1. According to the official action, the round wire 5 that engages around Hilfiker's housing, is read as applicant's claimed holder. However the "holder" as so construed is not disclosed or suggested to be wall mountable. The shower head of Hilfiker cannot be used alternatively in the so-called holder and apart from the holder, because detaching the shower head housing from the holder requires breaking the tie 14 that holds the spring-like wire 5 in place. Even if one dismantled Hilfiker's device by breaking tie 14 and detaching the shower head housing, the remaining unit (namely the housing) lacks the claimed grip.

Hilfiker does not disclose the subject matter claimed as a whole. Moreover, Hilfiker fails to even approximate the notion of a hand shower head whose housing can be engaged by an interference fit in a wall mounting so as to spray down or out onto a user from the wall mounting, and alternatively the shower head is removable so that the user can direct the spray manually while holding the shower head grip. Hilfiker does not meet or suggest either the general notion or the specific structure of a shower as claimed.

There is no basis to suggest that Hilfiker might be routinely or obviously altered to more nearly resemble applicant's claimed invention. There is nothing in the art to suggest that alternatively engaging and releasing a hand shower housing from a structure would have any particular benefit. On the contrary, separating the round spring wire 5 from the associated shower head housing would defeat aspects that Hilfiker relies upon. The handles (the ends of wire 5) are required if there is to be a manual grip for manipulating the device to aim the spray, and the handles function not only as handles but serve as a valve means that can controllably pinch off the hose. Hilfiker does not anticipate applicant's invention and the differences between the claimed invention and the prior art are such that the subject matter claimed as a whole is not shown to have been obvious.

Claims 1, 7-9, 11 and 13-14 were alternatively rejected as anticipated by US 4,091,998 – Peterson. Reconsideration is requested. As plainly shown at Fig. 1 and as taught by Peterson, opposed jaws or arms 73, 74 serve to hold the spraying apparatus on its hose connection when not in manual use. Peterson teaches a cradle for engaging a hand grip, not by an interference fit between a shower head housing and a wall mounting on which the shower head can be received as claimed.

Claim 1 positively recites the wall mountable holder, and the interference fit with which the holder engages the housing of the shower head. Peterson, like Hilfiker, lacks a holder that is attachable to a wall as claimed and merely provides a hanger on the end of the shower wall pipe to set the hand shower by engagement with its grip.

The prior art references cited as anticipating references under 35 U.S.C. §102 do not in fact meet all the aspects of the invention claimed. The prior art does not demonstrate the same structures as claimed and does not anticipate claim 1 as a whole.

Furthermore, the prior art does not show any realization or expectation of benefit on the part of the person of ordinary skill, with respect to applicant's idea of providing a wall mounting on which a hand shower head can be fixed so that the spray emits from the wall mounting, for example, at a selected height and direction as is apparent from applicant's Fig. 1, and also retains usefulness as a hand shower that is manually held and aimed by grasping a hand grip. The prior art does not anticipate the invention, and the differences between the invention and the prior art are such that one cannot conclude that the invention would have been obvious to a person of ordinary skill seeking to exploit predictable benefits from making routine modifications.

The claims as amended are definite. The invention claimed as a whole is not found in the prior art. The differences between the invention and the prior art are such that the subject matter claimed as a whole is not demonstrated to have been obvious.

Applicant requests reconsideration and allowance of the pending claims.

Respectfully submitted,

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